WP(C) 8301/2002
BEFORE
THE HON'BLE MR JUSTICE B K SHARMA

Heard Mr. S.K. Singh, learned counsel for the petitioner as well as Mr. R. Chokraborty, learned State counsel representing the respondents. I have also heard Mr. A.K. Goswami, learned Sr. counsel and S.C., N.C. Hills Autonomous Council assisted by Mr. S. Banik, learned Advocate.

This writ petition has been filed by a retired Hindi Teacher challenging the action of the respondents in making deduction of Rs. 53,894/- from the pensionary and retirement benefits of the petitioner. Such deduction has been made on the ground of over stay in service by the petitioner.

There is no dispute that the petitioner continued in his service till 31.12.97. He was intimated about the date of his retirement as 31.12.97 by the Headmaster of the school by Annexure-B letter dated 01.11.97. By order dated 14.09.98 the petitioner was allowed to dray provisional pension. The Headmaster of the school by his Annexure-D letter dated 27.05.2000 intimated the Inspector of Schools, N.C. Hills, Haflong about the entitlement of the petitioner on his retirement from service.

By Anenxure-E letter dated 31.05.2000, the Inspector of Schools, N.C. Hills, Haflong furnished the particulars regarding purported over stay of the petitioner in the service. The particulars were furnished to the Director of Pension. It is on that basis, Annexure-F pension payment order was issued showing over payment of pay and allowanced amounting to Rs. 53,894/-. It was indicated that the amount should be recovered from DCRG and final payment of pension and relief.

Being aggrieved by the aforesaid decision of the respondents and deduction of the amount of Rs. 53,894/-, the petitioner has filed the instant writ petition. There is no dispute that before taking the decision to deduct the aforesaid amount, the petitioner was not put to any kind of notice. Ms. R. Chokraborty, learned State counsel was requested to obtain instruction in the matter and to produce the service book of the petitioner. She has produced the service took and on perusal of the same, what has transpired is that in the service book the date of birth of the petitioner has been recorded as 16.12.1939. No correction has been made to the entry. However, the impugned decision has been taken on the basis of the school certificate in which the petitioner's age on 01.03.1975 has been shown as 36 years, 2 months and 13 days. On the basis of the age recorded in the said certificate, the respondents calculated the date of birth of the petitioner as 18.12.1938 and on that basis, took the impugned decision that the petitioner overstayed in service.

Law is well settled that entries in the service book are sacrosanct. If any change is to be made to such entries, more particularly relating to the date of birth, same cannot be done unilaterally, but will have to provide due notice to the petitioner. In the instant case, the respondents took unilateral decision to change the recorded date of birth in the service book. Since in the service book, the date of birth of the petitioner has been recorded as 16.12.1938, on that basis, the petitioner retired from service on attaining the age of superannuation w.e.f. 31.12.97. In fact, as noticed above, the Headmaster of the school also intimated the petitioner about the date of retirement on 31.12.97. After long 3 /4 years thereafter, the respondents could not taken the decision to deduct the aforesaid amount of Rs. 53,894/- from the retirement benefits of the petitioner and that too without providing any opportunity to the petitioner.

There is another aspect of the matter. Irrespective of the stand of the respondents, there is no dispute that the petitioner rendered his service upto 31.12.97 and if that be so, they cannot make any recovery from the service rendered by the petitioner from 01.01.97 to 31.12.97.

In view of the above, I have no hesitation to set aside and quashed the impugned decision of the respondents for making recovery of Rs. 53,894/- from the DCRG and final payment of pension and relief. It is submitted by the learned

counsel for the petitioner that the amount has already been deducted from the re tirement and pension benefits of the petitioner. The respondents shall refund th e same to the petitioner on or before 30.04.07 failing which the amount will acc rue interest as may be calculated as per bank norms.

The petitioner may obtain the certified copy of this order and produce t he same before the respondents for refund of the aforesaid amount of Rs. 53,894/ - with the target date.

Writ petition is allowed. There shall be no order as to costs.